REMARKS

Claims 1-49 are currently pending in the subject application, and are presently under consideration. Claims 1-49 are rejected. Claims 5 and 20-21 have been amended. Favorable reconsideration of the application is requested in view of the amendments and comments herein.

I. Objections to Claims 5 and 20-21

Claims 5 and 20-21 have been objected to for typographical errors. Applicant's representative respectfully submits that the claims have been amended in the manner suggested by the Examiner. The amendments to the claims were not presented earlier since this is the first time the Examiner has raised this objection. Moreover, the amendments to claims 5 and 20-21 do not change the scope of claims 5 and 20-21, and therefore, entry of the amendments to claims 5 and 20-21 would not place an undue burden on the Examiner. Therefore, entry of the amendments to claims 5 and 20-21 and withdrawal of this objection is respectfully requested.

II. Rejection of Claims 1-2, 4-9, 19-20, 22-27, 29-34, 44-45 and 47-49 Under 35 U.S.C. §102(b)

Claims 1-2, 4-9, 19-20, 22-27, 29-34, 44-45 and 47-49 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,109,311 to Blum, *et al.* ("Blum"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

In a response to an Office Action issued on March 5, 2009 ("Pervious Office Action"), Applicant's representative filed a response on April 1, 2009 ("Previous Response"). In the Previous Response, Applicant's representative set forth reasons that Blum does not disclose (means for, as recited in claim 26) assigning a sequence of time intervals to each software package of a plurality of software packages, as recited in claims 1 and 26 (See Previous Response, Pages 13-14). For purposes of brevity, those arguments will not be repeated but should still be considered to be in force. In response, the Examiner states the following:

> [Blum] teaches sequences of time slices in a time cycle are allocated to each program of the plurality of software programs (col. 3, lines 41-44), and that one of the program (subset) are executed during the allocated time slices (e.g., program 0 is executed during slices 1 and 2, predetermined time intervals) (col. 3, lines 46-54) defined by the allocated sequences of time (defined by the time slices in the time cycle) (Office Action, Page 14).

Applicant's representative respectfully submits that the Examiner's interpretation of Blum appears to be contrary to the decision issued by the Board of Patent Appeals and Interferences (BPAI) issued on September 18, 2008. Specifically, page 19 of the BPAI decision states that Blum discloses generating a recurring set of time slice intervals and assigning a time slice to a particular program (emphasis added). The BPAI decision also states that (at the time of the Appeal) in the claims, there is no requirement that a particular sequence of time be assigned to a particular software package. Claims 1 and 26 explicitly recite (means for) assigning a sequence of time intervals to each software package of a plurality of software packages. Thus, in claims 1 and 26, a particular sequence of time is assigned to a particular software package. In contrast to claims 1 and 26, in Blum, no sequences of time intervals are assigned. Instead, in Blum a sequence of program execution is defined for a set of time slices (See Blum Col. 3, Lines 40-55). Therefore, Blum does not disclose assigning a sequence of time intervals to each software package of a plurality of software packages. Accordingly, Blum does not anticipate claims 1 and 26, and claims 1 and 26, as well as claims 2, 4-9, 19-20, 22-27, 29, 34, 44-45 and 47-49 should be patentable over the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

III. Rejection of Claims 3 and 28 Under 35 U.S.C. §103(a)

Claims 3 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Patent No. 5,493,649 to Slivka, *et al.* ("Slivka"). Claims 3 and 8 depend from claims 1 and 26, respectively, and are patentable for at least the same reasons as claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 3 and 28, the Examiner cites Slivka solely for Slivka's disclosure of a checksum test (See Office Action, Page 8, citing Col. 1, Lines 56-67 of Slivka). However, the addition of Slivka does not make up for

the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 3 and 28 depend. Accordingly, claims 3 and 28 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

IV. Rejection of Claims 10-11 and 35-36 Under 35 U.S.C. §103(a)

Claims 10-11 and 35-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Publication No. 2005/0132375 to Douceur, *et al*. ("Douceur"). Claims 10-11 and 35-36 depend from claims 1 and 26, and are patentable for at least the same reasons as claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 10-11 and 35-36, the Examiner cites Douceur solely for Douceur's disclosure of background and foreground processes (See Office Action, Pages 9-10, citing Par. [0005] of Douceur). However, the addition of Douceur does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 10-11 and 35-36 depend. Accordingly, claims 10-11 and 35-36 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

V. Rejection of Claims 13-17 and 38-42 Under 35 U.S.C. §103(a)

Claims 13-17 and 38-42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Patent No. 5,621,663 to Skagerling ("Skagerling"). Claims 13-17 and 38-42 depend from claims 1 and 26, and are patentable for at least the same reasons as claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 13-17 and 38-42, the Examiner cites Skagerling solely for Skagerling's disclosure of a log file (See Office Action, Page 9, citing Col. 4, Lines 54-57 of Skagerling). However, the addition of Skagerling does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 13-17 and 38-42 depend. Accordingly, claims 13-17 and 38-42 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

VI. Rejection of Claims 18 and 43 Under 35 U.S.C. §103(a)

Claims 18 and 43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of Herbert, *et al.* ("Herbert"). Claims 18 and 43 depend from claims 1 and 26, respectively, and are patentable for at least the same reasons as claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 18 and 43, the Examiner cites Herbert solely for Herbert's disclosure of an isolated execution ring (See Office Action, Page 12, citing Pars. [0021], [0025] and [0041] of Herbert). However, the addition of Herbert does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 18 and 43 depend. Accordingly, claims 18 and 43 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

VII. Rejection of Claims 21 and 46 Under 35 U.S.C. §103(a)

Claims 21 and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum in view of U.S. Patent No. 6,223,201 to Reznak ("Reznak"). Withdrawal of this rejection is respectfully requested for at least the following reasons.

In the Previous Response, Applicant's representative set forth reasons that it would not be obvious to combine and modify the teachings of Blum with any reference, including U.S. Patent No. 6,438,704 to Harris, et al. ("Harris"), cited by the Examiner in the Previous Office Action. In the present Office Action, the Examiner simply swaps out Harris for Reznak, but provides nearly the same reasoning that was provided in the Previous Office Action. Thus, the arguments provided in the Previous Response will be substantially repeated.

Claims 21 and 46 depend from claims 1 and 26 and recite an executive software package that enforces a discipline that each respective software packages in the subset of the plurality of software packages is executed only during time intervals defined by a sequence of time intervals assigned to the respective software package in the subset of the plurality of software packages. In claims 21 and 46, the executive software package determines when the execution of any one of the respective software packages in the subset of the plurality of software packages extends into a time interval defined by the sequence of time intervals assigned to at least one different

software package in the subset of the plurality of software packages. In rejecting claims 21 and 26, the Examiner admits that Blum fails to disclose that execution of a software package extends into a time interval assigned to another software package, but contends that the teachings of Reznak make up for the deficiencies of Blum (See Office Action, Page 15). Applicant's representative respectfully disagrees. In Blum, a particular time slice is not associated with a program until after that program has been selected to be executed in the particular time slice, which selection occurs immediately prior to the execution (See e.g., Blum, Col. 4, Lines 40-56). That is, Blum assigns time slices to programs in real time. Since in Blum, programs are selected to be executed in real time, there is never a time that a program is being executed in a time slice that is associated with a different program.

A claim is not obvious where a suggested combination of references would require a substantial redesign and reconstruction of the elements shown in the prior art as well as a change in the basic principle under which the prior art was designed to operate. *In re Ratti*, 270 F.2d 810, 813, 123 U.S.P.Q. 349 (C.C.P.A. 1959). To modify Blum in such a manner that would make claims 21 and 46 obvious would require the inclusion of additional overhead systems that would have to assign particular time slices (e.g., sequence of time intervals) to programs (e.g., software packages) well before the duration of the time slice. Applicant's representative respectfully submits that the inclusion of such additional overhead would constitute a substantial redesign and reconstruction of Blum. Moreover, Applicant's representative respectfully submits that the purported modifications to Blum would change a basic principle of operation of Blum since the purported combination and modification would require that Blum <u>not</u> select programs to execute in time slices in real time, which appears to be a basic principle of operation of Blum. Accordingly Applicant's representative respectfully submits that combining and modifying Blum with any other reference (including Reznak) in a manner that would make claims 21 and 46 obvious would both (1) require a substantial redesign and reconstruction of Blum that would (2) change a basic principle of operation in Blum.

Moreover, Applicant's representative emphasizes that the above arguments explain that due to the design of the system in Blum, it would not be obvious to combine and modify Blum

with any reference in a manner that would make claims 21 and 46 obvious. Thus, Applicant's representative respectfully requests that any further rejection of claims 21 and 46 in which the Examiner contends it would be obvious to combine and modify Blum with another reference explain as to why the Examiner believes combining and modifying Blum in a manner that would make claims 21 and 46 obvious would not require a substantial redesign and reconstruction of Blum that would change a basic principle of operation in Blum. Accordingly, Blum taken in view of Reznak does not make claims 21 and 46 obvious, and claims 21 and 46 should be patentable over the cited art. Thus, withdrawal of this rejection is respectfully requested.

VIII. Rejection of Claims 12 and 37 Under 35 U.S.C. §103(a)

Claims 12 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Blum and Douceur in view of U.S. Patent No. 5,826,092 to Flannery ("Flannery"). Claims 12 and 37 depend from claims 1 and 26, respectively, and are patentable for at least the same reasons as claims 1 and 26, and for the specific elements recited therein. Moreover, in rejecting claims 12 and 37, the Examiner cites Flannery solely for Flannery's disclosure of a program that conserves power (See Office Action, Page 16, citing Col. 3., Lines 51-58 of Flannery). However, the addition of Flannery does not make up for the aforementioned deficiencies of Blum with respect to claims 1 and 26, from which claims 12 and 37 depend. Accordingly, claims 12 and 37 should be patentable over the cited art and withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that the present application is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,

Date 2 September 2009

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